

PRELIMINARY AMENDMENT
CIP of USSN 08/424,983

REMARKS

Attached hereto for the Examiner's convenience, is a copy of the ATCC deposit receipt for the hybridoma recited in new Claim 40.

Also, submitted herewith is a Statement of Availability with respect to the deposited hybridoma recited in new Claim 40. In the attached Statement of Availability, it is stated that Hybridoma RAP-42-OVAF₂#1hc is the same hybridoma described in Great-Grandparent Application Serial No. 08/053,030, filed April 23, 1993.

Support for new Claims 33-40 can be found, *inter alia*, in cancelled Claims 1-33, and the examples provided in the specification. Hence new Claims 33-40 do not constitute new matter, and thus entry is requested.

Applicants would like to bring to the Examiner's attention U.S. Patent Application Serial No. 09/072,278, filed May 4, 1998. It is believed that the '278 Application corresponds to European Patent 693132 B1, published January 24, 1996 (cited in the Information Disclosure Statement filed simultaneously herewith), because both are based upon PCT Published Application WO 94/24304 (also cited in the Information Disclosure Statement filed simultaneously herewith).

At least some of the claims presented in this Preliminary Amendment are believed to overlap those of European Patent 693132 B1. Further, the esters and immuno-conjugates disclosed in Example 1a) and b) (the esters) and Example 4 (the corresponding conjugates) of European Patent 693132 B1 are

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believed to fall within the scope of at least the generic claims of both the present application and European Patent 693132 B1,

The Examiner is requested to note that the numbering system used for rapamycin in the present application and in European Patent 693132 B1 are different, e.g., Applicants refer to positions 31 and 42 of rapamycin, whereas European Patent 693132 B1 refers to positions 28 and 40, respectively. However, the positions are believed to correspond to each other.

In paragraph 15, on page 7 of the Office Action dated November 24, 1999, in Parent Application Serial No. 08/424,983, the Examiner noted Applicants' claim to priority to Application Serial No. 08/224,205 filed April 14, 1994. However, it was the Examiner's position that Application Serial No. 08/224,205 was abandoned before Parent Application Serial No. 08/424,983 was filed.

The Examiner is requested to note that Applicants filed a Petition to Revive said Application Serial No. 08/224,205 on November 19, 1999, and that said Petition was granted on February 11, 2000. A copy of the Decision granting the Petition is attached hereto. Thus, there was co-pendency between said Application Serial No. 08/224,205 and Application Serial No. 08/424,983. As a result, Applicants are entitled to benefit of the April 14, 1994, filing date of U.S. Application Serial No. 08/224,205.

Moreover, the disclosure of the present application and that of Great-Grandparent Application Serial No. 08/053,030, filed April 23, 1993, are basically the same. Thus, Applicants are also

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entitled to benefit of the April 23, 1993, filing date of the Great-Grandparent Application.

In paragraph 25, on page 12 of the above-noted Office Action, the Examiner rejected the claims under 35 U.S.C. § 102(a) or (b) as being anticipated by WO 94/24304.

For the following reasons, Applicants respectfully traverse the Examiner's rejection as if applied to the claims of the present application.

The Examiner is requested to note that WO 94/24304 was published on October 27, 1994. Thus, WO 94/24304 was published after the April 23, 1993, and April 14, 1994, effective filing dates of the present application.

Accordingly, WO 94/24304 is not prior art under 35 U.S.C. § 102(a) or (b).

In paragraphs 26 and 28, on pages 14 and 15, respectively, of the above-noted Office Action, the Examiner rejected the claims under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 5,504,091 (Molnar-Kimber et al), or, in the alternative, under 35 U.S.C. § 103 as being obvious over Molnar-Kimber et al.

For the following reasons, Applicants respectfully traverse the Examiner's rejections as if applied to the claims of the present application.

The effective filing date of Molnar-Kimber et al under 35 U.S.C. § 102(e) is at best April 23, 1993.

This is not before the April 23, 1993, effective filing date of the present application, as required by 35 U.S.C. § 102(e).

Accordingly, Molnar-Kimber et al is not prior art against the present claims.

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The Examiner is invited to contact the undersigned at his Washington telephone number on any questions which might arise.

Respectfully submitted,


Gordon Kiz

Registration No. 30,764

**SUGHRUE, MION, ZINN,
MACPEAK & SEAS, PLLC**
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3202
(202) 293-7060

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